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NOTE BY THE SECRETARY-GENERAL

The Secretary-General has the honour to transmit to the Security Council a report submitted by the Executive Chairman of the Special Commission established by the Secretary-General pursuant to paragraph 9 (b) (i) of Security Council resolution 687 (1991).

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Annex

Special report by the Executive Chairman of the Special Commission established by the Secretary-General pursuant to paragraph 9 (b) (i) of Security Council resolution 687 (1991)

A. Introduction

1. In the Secretary-General's report circulated to the Security Council on 25 January 1992, the Special Commission expressed its most serious concern 1/ at the failure of Iraq to provide full, final and complete disclosure of all aspects of its programmes to develop weapons of mass destruction and to accept its obligations in respect of ongoing monitoring and verification of its compliance with its obligations under section C of Security Council resolution 687 (1991). In the light of the report which the Executive Chairman has received from a special mission which he sent to Baghdad on 27 January 1991, 2/ this failure of Iraq is now clearly tantamount to a rejection by the Government of Iraq of any obligations imposed on it by Security Council resolutions 707 (1991) and 715 (1991), both of which were adopted under Chapter VII of the Charter (see para. 14 below). Instead, Iraq recognizes only its own understanding of obligations imposed on it by paragraphs 10 and 12 of Security Council resolution 687 (1991) which falls far short of what is necessary for the implementation of the plans for ongoing monitoring and verification approved by resolution 715 (1991).

2. For the Special Commission this is a matter of very great importance as the Commission, in the discharge of its responsibilities under the resolutions of the Council, now has to commence in Iraq ongoing monitoring and verification activities. However, monitoring and verification of Iraq's unconditional obligation not to use, develop, construct or acquire any weapons of mass destruction can only be done effectively if Iraq acknowledges and abides by its obligations under resolution 707 (1991) and the plans for ongoing monitoring and verification approved by Council resolution 715 (1991).

B. The basic requirements for ongoing monitoring and verification: Security Council resolutions 707 (1991) and 715 (1991)

(i) Resolution 707 (1991)

3. Ongoing monitoring and verification can only be carried out effectively if the monitoring authorities have the clearest possible picture of what Iraq's capabilities have been in the development and production of weapons of mass destruction and what industrial facilities and materials remain at its disposal or are from time to time acquired which, while devoted to civilian activities, could be converted with relative ease to proscribed military uses. On 15 August 1991, in its resolution 707 (1991), the Security Council demanded that Iraq provide the full, final and complete disclosure of its weapons capabilities required for the clearest possible picture of what those capabilities have been. Iraq has so far failed to provide that disclosure,

although some progress has been made through a procedure of interrogation where specific questions are addressed to Iraq to which it replies.

4. This is not the procedure called for by the resolution, but it is the only way in which it has proved possible to make any progress. This procedure will not achieve the desired result. Experience to date has borne this out. For example, in response to questions put by the special mission dispatched recently to Iraq by the Special Commission, Iraq has admitted that originally it had declared under resolution 687 (1991) only a part of the ancillary equipment for its ballistic missile force. It explained that the undeclared equipment had been destroyed without notification to the Commission in the summer of 1991. The Commission had previously requested Iraq to provide the list of all items that fell under resolution 687 (1991), but which had been destroyed by Iraq without the supervision of the Commission. Up to now no such list has been provided so it is not possible to assess the full implications of these actions by Iraq. However, it is clear that concealment of the destruction of items covered by resolution 687 (1991) has considerably complicated the inspection process and distorted the picture of Iraq's programme of relevant ballistic missiles which has not been completely disclosed under resolution 707 (1991). Furthermore, the unilateral destruction of these items carried out by Iraq without the supervision and consent of the Commission and without prior or subsequent notice is not in accordance with resolution 687 (1991).

5. Iraq is also required to provide a proper accounting for all items that fall under resolution 687 (1991), both under that resolution and under resolution 707 (1991). An example of Iraq's failure in this regard is to be found in Iraq's insistence that its chemical weapons production did not start until 1984, when the United Nations itself concluded that Iraq had used chemical weapons against Iran in 1983. Given that Iraq also inconsistently claims that all its chemical weapons were produced indigenously, this completely undermines the credibility of the figures that Iraq has given for chemical weapons production and use and the material balance that it has provided to the Special Commission. Furthermore, neither documentary nor complete physical supporting evidence has been provided for Iraqi responses to questions concerning the import or production of chemical weapons, chemical warfare agents, related subsystems and production facilities, equipment, etc. In relation to biological weapons, Iraq clearly violated its obligations to hand over to the Commission all its biological weapons-related items when it destroyed buildings at Salman Pak immediately prior to the first Commission inspection there. Explanations provided to date, including those given most recently to the special mission, have not been convincing.

6. Much of the information obtained recently should have been provided by Iraq on its own initiative as part of its compliance with resolutions 687 (1991) and 707 (1991). The examples of Iraq withholding information from the Special Commission until specifically asked show that full, final and complete disclosure of all aspects of its programmes has not been provided as required by resolution 707 (1991). These examples also show that the interrogative approach will not lead to disclosure of all information.

7. A further matter regarding Iraq's compliance with certain provisions of Security Council resolution 707 (1991), other than those relating to reporting, and which impinge upon the privileges and immunities of the Special Commission, has recently become a matter of growing concern. Under that resolution Iraq is required to allow the Commission "to make full use of ... such airfields in Iraq as (it) may determine are most appropriate for the work of the Commission". To date inspection teams entering and leaving Iraq have been required to use the Habbaniyah airfield 100 kilometres from Baghdad, ostensibly because it was the only undamaged operational field available. However, there are now two airfields (Muthanna and Rasheed) within Baghdad city limits which are operational. Iraqi Airways is operating scheduled internal flights out of Muthanna and United Nations helicopters are based at Rasheed. At Habbaniyah Iraq is imposing increasingly onerous requirements on incoming and outgoing United Nations flights to and from Kuwait or Bahrain which considerably delay loading and off-loading and which have come close to harassment. Aircraft are also required to use a runway several kilometres away from the airport ground facilities.

8. Given the distance of Habbaniyah from the Special Commission's centre of operations in Baghdad and the onerous conditions now there imposed, the Commission, on 23 January 1992, made an official approach to the Government recalling the relevant provisions of resolution 707 (1991) and proposing that the Commission's incoming and outgoing flights use Rasheed or Muthanna airports. So far no response has been received and persistent follow-up attempts by the Commission's staff in Baghdad have met with evasive and temporizing replies.

9. The Secretary-General's report of 25 January 1992 refers not only to the difficulties at Habbaniyah airport, but also to Iraq's constant objections to the Special Commission's aerial surveillance flights and to the failure of Iraq to deliver to IAEA part of the documents forcibly removed from a nuclear inspection team in Baghdad on 23 September 1991. The protests on aerial surveillance continue; while the documents have been promised they have not yet been delivered. These two further examples demonstrate Iraq's refusal to acknowledge its obligations under resolution 707 (1991).

10. In the light of past experience, a positive outcome to these matters will only be achieved if a very firm stand is taken.

(ii) Resolution 715 (1991)

11. The most serious difficulty, however, which confronts those responsible for implementing section C of resolution 687 (1991), is Iraq's apparent rejection of the plans for ongoing monitoring and verification submitted to the Council by the Secretary-General and by the Director-General of IAEA (S/22871/Rev.1 and S/22872/Rev.1 and Corr.1). These plans were approved by the Council in its resolution 715 (1991). By the same resolution, the Council demanded that Iraq meet unconditionally all its obligations under the two plans and cooperate fully in carrying them out. It is of great importance that Iraq expressly recognize its obligations under the two plans and resolution 715 (1991).

12. Iraq's position on resolution 715 (1991) and the plans approved thereunder was formally stated in a letter of 19 November 1991 which the Foreign Minister of Iraq addressed to the President of the Security Council. In the letter Iraq strongly attacked the plans for ongoing monitoring and verification, claiming that they were "aimed at objectives incompatible with the letter and spirit of the United Nations Charter, the norms of international law and international and humanitarian pacts and covenants". The letter further asserted that the plans "constituted a dangerous precedent, causing the gravest damage to the credibility of the United Nations and its fundamental role in the protection of the independence and territorial sovereignty of Member States".

13. With the letter of 19 November 1991, Iraq transmitted "information requir . under resolution 687 (1991)". This information, however, did not correspond to the declarations required under the plans approved by resolution 715 (1991). This failure by Iraq to comply with the plans was reported to the Council in the Secretary-General's report of 25 January 1992, where detailed information was provided on the steps being taken by the Special Commission to seek Iraq's compliance with Security Council resolution 715 (1991). As was indicated in that report, the Commission was sending a special mission to Baghdad, at the end of January 1992, to underline the Commission's most serious concern with Iraq's failure to provide the full, final and complete disclosure of its programmes in the field of weapons of mass destruction demanded by resolution 707 (1991) and to comply with resolution 715 (1991).

14. That special mission has now returned and reported to the Executive Chairman. While it obtained some of the information which should previously have been supplied under resolution 707 (1991), this had to be done by the interrogative procedure referred to above. On resolution 715 (1991), the special mission met with absolutely no success. Iraq, at the level of the Minister of State for Foreign Affairs, reiterated that the Government maintained its position expressed in the letter of 19 November 1991.

15. It is now completely clear that Iraq has arrogated to itself the determination of how paragraphs 10 and 12 of section C of Security Council resolution 687 (1991) should be applied. The Special Commission has thus regretfully concluded that, despite the Commission's best endeavours, Iraq has no intention of meeting its obligations under the plans approved under, and the provisions included in, Security Council resolution 715 (1991).

C. Conclusions

16. As such a position is contrary to the Security Council resolutions, the Special Commission and the IAEA would be precluded from carrying out effectively a programme of ongoing monitoring and verification of the nature and scope approved by the Council. Should the Commission now seek to initiate the ongoing monitoring and verification phase of its mandate under these circumstances, it will be sending a message that, in fact if not in law, it is prepared to operate this phase of its responsibilities under Iraq's, not the Council's conditions. Past experience in Iraq has demonstrated the very

serious inadequacies of such an approach. The Commission is therefore not legally able nor is it prepared to adopt it. In such circumstances the Commission has felt that it had no alternative but to report this matter immediately to the Council for its instructions.

17. The statement issued on behalf of the Council on 31 January 1992, at the conclusion of the 3046th meeting of the Council held at the level of Heads of State and Government, stresses that all of the resolutions adopted by the Council on this matter remain essential to the restoration of peace and stability in the region and must be fully implemented. The circumstances above show that the longer firm action is delayed, in the face of Iraq's repeated refusal to acknowledge any obligations under Security Council resolutions 707 (1991) and 715 (1991), the more intransigent the Government's position is likely to become. If this attitude is not changed the third and final phase of the responsibilities of the Special Commission under paragraph 10 of resolution 687 (1991) cannot be implemented, nor can resolutions 707 (1991) and 715 (1991).

Notes

1/ S/23514, paras. 15 to 26.

2/ See para. 14 below.